

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1423 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUMANBEN ASHOKBHAI PATEL

Versus

BHUPENDRABHAI RAVJIBHAI PATEL

Appearance:

MR KC SHAH for Petitioners

MR DP KINARIWALA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. The learned counsel for the petitioner states that the respondent Nos. 2 and 3 are neither necessary nor proper parties to the C.R.A. and he prays for deletion of their names. This prayer is not opposed by counsel

for the respondent No.1. Order accordingly. The names of respondent Nos. 2 and 3 are deleted from the cause title of this Civil Revision Application. Office to make necessary connection in the cause title.

#. Rule. As Mr.Kinariwala puts appearance on behalf of respondent No.1, the office needs not to issue notice of rule to the respondent No.1.

#. On the joint request of learned counsel for the parties, the matter is taken up for final hearing today.

#. Heard learned counsel for the parties.

#. The petitioner by this revision application challenges the order of the Joint Civil Judge (J.D.), Anand dated 17/08/1998 below Ex.94. Under this order application wherein the petitioner prayed for calling of the deponent who filed the affidavit for the applicant-respondent for cross examination was came to be rejected. It is not in dispute that this Civil Revision Application arises from the proceedings initiated by the plaintiff-respondent for revocation of the probate granted in favour of the petitioner. The parties in those proceedings have passed the pursis to dispose of that application on affidavits.

#. The learned court below has rejected this application of the petitioner on the ground that the parties are given consent for deciding the main application as per Order 19 Rule 1 of Code of Civil Procedure. The learned trial court has not considered the provisions of Order 19 Rule 2 of Code of Civil Procedure, which reads as under:-

Power to order attendance of deponent for
cross-examination :-

- (1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.
- (2) Such attendance shall be in court, unless the deponent is exempted from personal appearance in court or the court otherwise directs.

Though the parties to the proceedings have given

consent for decision of the same on affidavit but either of them has a right to apply for calling deponent for cross examination and the court has ample power to pass the order for calling the deponent for cross examination unless the deponent is exempted from personal attendance in court. In Order 19 Rule 2 of CPC therein nothing which bars request to be made by either of the parties to the proceedings where they consented for decision on affidavit to call for the deponent for cross examination. The approach of the court below is wholly perverse. The order of the court below cannot be allowed to stand. In case this order allowed to stand it will occasion failure of justice to the petitioner. Though at this stage the matter may be remanded back to the court below to pass fresh order but the counsel for the respondent has given out that the respondent has no objection to produce the deponent who filed the affidavit for him for cross examination by the petitioner but the matter may not be delayed. In view of this consent given by the learned counsel for the respondent the learned trial court is directed to see that as far as possible, the cross examination of the deponent, who is called for the cross examination by the petitioner is completed on the day on which he was called for the same. For any reason if the court find it difficult to complete his cross examine on that day, the matter may be taken day-to-day. The respondent shall produce deponent for cross examination on the day which is fixed by the learned trial court for cross examination. The application is of year 1993 and it is expected of the learned trial court below to decide the same finally within four months from the date of the receipt of the writ of this order or certified copy thereof whichever is earlier.

#. The rule and Civil Revision Application stand disposed of accordingly. No order as to costs.

(S.K.Keshote, J.)

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